

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077 CS Motor Vehicle Dealership Operations
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2682(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Civil Justice Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers, distributors, and importers, and also regulates numerous components of franchise contracts they enter into to do business in the state of Florida.

HB 1077 CS makes a number of changes to this chapter, including:

- Requiring a licensed manufacturer, importer, or distributor to repurchase certain inventory and business-related equipment from franchised motor vehicle dealers whose franchises have been terminated. If the manufacturer, distributor, or importer fails to do this as specified, it faces sanctions from the state Department of Highway Safety and Motor Vehicles (DHSMV).
- Specifying new requirements for a licensed manufacturer to open or reopen a dealership without being subject to protest by motor vehicle dealers.
- Exempting existing new-car dealers applying for an additional dealer license from having to attend the required new dealer training seminars, under certain conditions.
- Clarifying various definitions and the measurement of geographic boundaries.

HB 1077 CS raises no apparent constitutional or other legal issues. It has no fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – HB 1077 CS creates additional requirements and obligations on automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers and regulates the franchise relationship between franchised dealers and the manufacturers. Section 320.605, F.S., states:

“It is the intent of the Legislature to protect the public health, safety, and welfare of citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.”

Section 320.27, F.S. defines “franchised motor vehicle dealer” as “any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1).”

Based on the most recent available DHSMV records, the state has 1,497 franchised motor vehicle dealers and 355 licensed vehicle manufacturers.

The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers are primarily in ss. 320.60 -320.071, F.S. These sections of law specify:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a vehicle manufacturer’s license;
- The process, timing, and notice requirements for licensed manufacturers wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensed manufacturer must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The circumstances under which a licensed manufacturer, distributor, or importer may temporarily operate as a licensed vehicle dealer;
- Amounts of damages and fines that can be assessed against licensed manufacturers in violation of statutes;
- The ability of licensed vehicle dealers to seek administrative hearings; and
- DHSMV’s authority to promulgate rules to implement these sections of law.

During the 2005 legislative session, Florida franchised motor vehicle dealers supported legislation to amend current statutes to address several issues arising from court decisions that they said had the potential to negatively impact their ability to remain competitive. The legislation was unsuccessful.

Effect of Proposed Changes:

HB 1077 CS makes a number of changes to existing statutes regulating automobile franchisees in this state. The general impact of the bill is to raise the level of protection for franchised motor vehicle dealers.

The bill:

- Amends s.320.27, F.S., to delete the requirement that applicants for new franchised dealer licenses attend training seminars if they have held an existing license continuously for the past two years and are in good standing with the DHSMV.
- Amends s. 320.60(3), F.S., to clarify the existing definition of “demonstrator” by specifying that new vehicles which have been driven by prospective customers qualify as demonstrators.
- Amends s. 320.64, F.S., to create a new cause for a licensed manufacturer, importer, or distributor to have its license denied, suspended, or revoked by DHSMV. The new cause is failing to repurchase within a specific time frame certain vehicles and other property from a dealer upon the voluntary or involuntary termination of that dealer's franchise.

Specifically, licensed manufacturers would be required to: buy back, at net cost, new vehicles with a mileage of 2,000 miles or less; repay the cost of new, unused, undamaged, and unsold parts and accessories in their original packaging and in unbroken lots, with exceptions for sheet metal; pay fair market value for signs, special tools, and other equipment that meet certain conditions; and pay the costs related to packing, storing, loading and shipping these items eligible for repurchase.

The dealer would have 90 days to return the property to the manufacturer, who would have 60 days upon receipt of the items to pay the dealer. These repurchase provisions do not apply in cases where the dealer's franchise is being terminated as a result of dealer selling his or her assets or stock.

Other states already have this provision in their dealer laws, as do some franchise contracts.

- Amends s. 320.642(5), F.S., to make it more difficult for a licensed manufacturer to relocate an existing franchised dealership, and then open a new dealership at the old location without notice or the opportunity for other dealers to protest. The bill requires the manufacturer to meet timing and dealership distance requirements, and specifies that the manufacturer cannot open a new dealership for two years if it is within 4 miles of the old site. It also deletes the requirement that written notices to DHSMV about a manufacturer's proposal to open a new dealership must be sent via certified mail.
- Creates s. 320.642(7), F.S., to require that all measurements required for the purposes of determining the locations of existing and proposed new dealerships be based on the “geometric centroid.” Geometric centroid” is a complex mathematical term that roughly means the center point of, in this case, the dealership's property.
- In a related issue, creates s. 320.642(8), F.S., specifying that the DHSMV is not obligated to check the accuracy of the measurements in the applications or otherwise asserted. DHSMV staff says the agency would have to hire a surveyor to determine these measurements, which could be expensive. The new provision also specifies that any dispute about distance measurements in an application shall be resolved by an administrative hearing in accordance with ss. 120.569 and 120.57, F.S.

HB 1077 takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 320.27, F.S., to delete training requirements for certain new-car licensure applicants.

Section 2: Amends s. 320.60, F.S., to amend the definition of “demonstrator.”

Section 3: Amends s. 320.64, F.S., to specify the types of costs owed to a motor vehicle dealer whose contract has been terminated by a manufacturer.

Section 4: Amends s. 320.642, F.S., to amend criteria determining when a proposed opening or reopening of a motor vehicle dealership is subject to protest. Specifies process to protest distance measurements and defines DHSMV's responsibility to determine such measurements.

Section 5: Specifies this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent HB 1077 CS protects the rights of existing franchised motor vehicle dealers in cases involving the establishment of new dealerships in a service area, buy-backs of certain inventory and equipment upon franchise termination, and the fate of new ownerships involving transfer, the bill may benefit franchised motor vehicle dealers. These same law changes may create financial costs for licensed manufacturers, distributors, and importers. To the extent that the bill's provisions increase protections for existing franchised motor vehicle dealers, the bill could negatively impact the ability of persons wishing to become licensed and franchised motor vehicle dealers in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to an analysis of HB 1077 CS because the bill does not require counties or municipalities to expend or raise local funds, nor does it reduce the percentage of state tax revenues shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rulemaking authority to implement the provisions of HB 1077 CS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

House Transportation Committee

At its March 14, 2006, meeting, the House Transportation Committee adopted a strike-everything-after-the-enacting clause amendment to HB 1077 primarily to conform it to its Senate companion. The strike-all amendment was different from the original House bill in only three respects:

- It amended s.320.27, F.S., to delete the requirement that applicants for new franchised dealer licenses attend training seminars if they have held an existing license continuously for the past two years and are in good standing with the DHSMV.
- It amended s.320.642, F.S., to specify that the DHSMV is not obligated to check the accuracy of the measurements in the applications, and that any dispute about distance measurements in an application shall be resolved by an administrative hearing in accordance with ss. 120.569 and 120.57, F.S.
- It deleted the proposed changes to s. 320.643, F.S., related to criteria and circumstances in which a licensed manufacturer can prohibit a franchised dealer from selling his or her dealership to a new owner who plans to relocate it.

The strike-all amendment was adopted without objection, and the bill as amended passed by a vote of 13-0. It was reported as a committee substitute.